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97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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COMPLETED

OFFENSES AGAINST FEDERAL OFFICIALS

SEPTEMBER 14, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HUGHES, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 907]

The Committee on the Judiciary, to whom was referred the bill (S. 907) to amend sections 351 and 1751 to title 18 of the United States Code to provide penalties for crimes against Cabinet officers, Supreme Court Justices, and Presidential staff members, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE OF THIS LEGISLATION

S. 907, as reported by the Committee, would amend sections 351 (relating to Congressional assassination, kidnaping, and assault) and 1751 (relating to Presidential assassination, kidnaping, and assault) of title 18 of the United States Code. The primary purpose of the bill is to expand those sections to cover other Federal officials deserving of the protection those sections provide.

Specifically, the amendment to section 351 would extend its coverage to Cabinet Secretaries (and nominees) and their second-in-command, the Director (and nominee to be Director) and Deputy Director of the Central Intelligence Agency, and Justices of (and nominees to) the United States Supreme Court. The amendment to section 1751 would extend its coverage to certain senior staff members employed in the Executive Office of the President and in the Office of the Vice President.

The bill would also make certain technical and conforming changes in related statutes.

The Committee recognizes that the individuals to whom the protections of sections 351 and 1751 are extended play significant roles in the Federal Government and, as a result, face significant risks to their physical safety. The Federal interest in protecting them and in pro-

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viding a mechanism to prosecute attacks upon them is obvious. The events of the past year-and-a-half, including the March, 1981 attempted assassination of President Reagan and the attendant permanent disabling of his press secretary, James Brady, and the reecnt attack on Justice Byron White in Arizona, make the Federal interest in this legislation great and the need for the legislation urgent.

Background

Section 351 of title 18 of the United States Code prohibits killing, kidnaping, and assaulting Members of Congress and Members of Congress-elect. Attempts and conspiracies to kill and kidnap are also prohibited. Section 1751 extends the same protections to the President, the Vice President, the President-elect, the Vice President-elect, someone legally acting as President, and, if no Vice President, those in the line of succession to the Presidency. High ranking Cabinet officials, the Director and Deputy Director of the CIA, and high ranking staff members serving in the Executive branch of the Government are not covered by either of those statutes or elsewhere in title 18. In addition, while 18 U.S.C. § 1114, in a more limited fashion, protects "judges of the United States," that language may exclude Justices of the United States Supreme Court.[1] Testimony of Lowell Jensen, Assistant Attorney General in charge of the Criminal Division, United States Department of Justice, Hearing on S. 907 before the Subcommittee on Crime of the Committee on the Judiciary (September 9, 1982). To clarify this matter, S. 907 explicitly includes Justices of the Supreme Court, and nominees to the Court, in the coverage of section 351.

Without the extension of sections 351 and 1751, cases involving assassinations, kidnappings, and assaults upon these high Federal officials would usually be prosecuted under State and local criminal statutes.[2] While these statutes might be adequate, both in the extent of protection and the kind of punishment they provide, the Committee believes that it is better to have a uniform statute and uniform punishment where high Federal officials are involved.

History of the Act

S. 907, in the form considered by the House, is a combination of two bills introduced in the Senate by Senators Thurmond, Zorinsky and Quayle. After passage by the Senate in May 1982, by a voice vote, the bill was sent to the House.

On September 9, 1982, the Subcommittee on Crime of the House Judiciary Committee held one day of hearings on the bill. It received testimony from Lowell Jensen, Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice.

[1] While Rule 54 of the Federal Rules of Criminal Procedures defines "Justice of the United States" to include a Supreme Court Justice, at least for purposes of those rules, 28 U.S.C. § 451 explicitly excludes Supreme Court Justices from its definition of "Judge of the United States," at least for purposes of title 28. Rule 1101 of the Federal Rules of Evidence, in defining "Courts and magistrates", also does not include Supreme Court Justices. Title 18 itself does not define the term.

[2] Sections 113, 1111, 1112, and 1113 of title 18 proscribe the killing of or assault upon any person, no matter what his or her status, if the crime occurs within the "special maritime and territorial jurisdiction of the United States." Kidnapping is also a Federal crime if the victim is transported across the state lines, or if any act against the victim it done within the "special maritime and terriorial jurisdiction of the United States, or within the special aircraft jurisdiction of the United States". U.S.C. § 1201.

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Immediately following the hearing, the Subcommittee held a mark-up on the bill and adopted an amendment in the nature of a substitute that made technical changes in the bill, and three substantive amendments offered by Mr. Hughes, Chairman of the Subcommittee. See discussion infra.

On September 14, 1982, the Committee on the Judiciary held one day of markup on S. 907, as amended. The Committee ordered the bill reported to the full House by a voice vote.

Section-by-Section Analysis

The first section of the bill amends section 351(a) of title 18 to add to its coverage a member of the Executive branch of the Government who is the head of a department listed in section 101 of title 5 of the United States Code, the second ranking official in such department, the Director and Deputy Director of the Central Intelligence Agency, and a Justice of or nominee to the Supreme Court of the United States. By amendment offered by Mr. Hughes at Subcommittee, the section also covers nominees to the position of Cabinet Secretary and CIA Director.

In the opinion of the Committee, Cabinet Secretaries and the CIA Director should be included within the protecton of section 351 because of the high visibility and often sensitive nature of their positions. Similarly, nominees to these positions may share the same risks. Those who serve as the second-in-command to Cabinet Secretaries are often called upon to act as head of the Department in the absence of the Secretary, and so should also be protected.

The first section also amends section 351 by adding a new subsection (h), which provides that the government, in a prosecution under section 351, need not prove that the effender knew the status of the victim at the time the offense occurred. While current law on this issue is unclear, at least with regard to a prosecution under section 351,[3] the Committee believes that the interest in protecting these specified Federal officials is so strong that the statutes should reach and protect them no matter whether the defendant knew the victim's status or not.[4] Since section 351 does not on its face resolve this issue, the Committee believes it is best to make it explicit that no such showing is required. Subsection (h) was added by an amendment offered at Subcommittee by Mr. Hughes.

Finally, the first section adds a new subsection (i) to section 351. It provides that the United States has extraterritorial jurisdiction over an offense under section 351. This provision is new to the law, and was added at Subcommittee by an amendment offered by Mr. Hughes. While section 351 may already have extraterritorial application, the Committee believes that explicit language is necessary to eliminate any ambiguity in the law. For instance, in *United States* v. *Layton*, 509 F. Supp. 212 (N.D. Cal.), appeal dismissed, 645 F. 2d 681, cert. denied. 452 U.S. 972 (1981), the defendant argued unsuccessfully that

[3] This issue was raised in a section 351 prosecution for an assault on Senator John Stennis in Washington, D.C. In *U.S.* v. *Marshall*, Crim. Case #267-73. Judge Joseph Waddy ruled orally that the victim's status was not an element of the offense.

[4] It is clear, at least with regard to 18 U.S.C. § 1114, that the government need not prove that the defendant knew the victim's official status. *U.S.* v. *Feola*, 420 U.S. 671 (1975). The Committee does not intend the adoption of the amendment to section 351 to in any way affect the judicial interpretation of section 1114 or other similar statutes.

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the United States had no jurisdiction under section 351 in a prosecution for the killing of United States Congressman Leo Ryan in Guyana. Despite the Congress' failure to explicitly state that section 351 applies extraterritorially, the court inferred such application.

While the term "extraterritorial jurisdiction" is not defined in title 18, the Committee intends that its meaning in this bill be that given to the term by numerous courts. See, e.g., *United States* v. *Layton*, id. at 215. There are five principles under which the law of nations permits the extraterriorial application of a nation's criminal laws. The first is "territorial," based on the place where the alleged crime was committed. In its broadest scope, the territorial principle reaches not only acts committed within the territory of the nation seeking to prosecute, but also acts intended to produce, and actually producing, detrimental results within that nation. The second is "nationality," based on the nationality of the offender. The third is "protective," based on the protection of the interests and integrity of the nation seeking to prosecute. The fourth is "passive personality," based on the nationality of the victim. The fifth is "universality," based on custody of the offender by the nation seeking to prosecute.

In all situations described by these principles, subsection (i) permits the exercise of extraterritorial jurisdiction.

Section 2 of the bill makes certain technical and conforming changes.

Section 3 of the bill amends subsection (a) of section 1751 of title 18 to add senior staff of the President and Vice President to its coverage. These senior staff are defined as those appointed under 3 U.S.C. § 105 (a) (2) (A) (relating to assistance and services for the President) and 3 U.S.C. § 106(a) (1) (A) (relating to assistance and services for the Vice President). In the opinion of the Committee, the addition of these senior staff members to section 1751 does not place a significant new burden on Federal law enforcement, since only 25 people may be appointed under section 105(a) (2) (A); under section 106(a) (1) (A), a maximum of five people may be appointed. It is these members of the staff of the Executive branch who are most visible and who most often travel with the President and Vice President, thus placing them at similar risks. Less senior staff members obviously do not meet these criteria and do not need the protection provided by section 1751.

Section 3 also amends subsection (e) of section 1751 to provide that the punishment for assaulting senior staff members is a $5,000 fine, 1 year in prison, or both. However, the punishment is enhanced to a $10,000 fine, 10 years in prison, or both, if personal injury results. This penalty scheme is the same as that currently provided by section 351 for Members of Congress. Current law with regard to assaults on the President, President-elect, Vice President-elect, someone acting legally as President, and those in the line of succession to the Presidency, remains the same: no matter whether personal injury occurs or not, the maximum punishment is a $10,000 fine, 10 years in prison, or both.

The bill does not change the language of section 1751(g), which authorizes the payment of up to $100,000 for a reward for information concerning a violation of that section. However, section 3 of the bill limits the application of subsection (g) to section 1751(a) (1). The effect of this limitation is to preclude the issuance of a reward under

this section of title 18 for information concerning the killing or kidnaping of, or assault upon, a senior staff member of the Executive branch. It does not, or course, preclude the issuance of a reward authorized elsewhere in the Federal law that is otherwise applicable for this purpose. See, e.g., 18 U.S.C. 3059.

Section 3 of the bill also adds a new subsection (j) to subsection 1751, providing that the Government need not prove that the defendant knew the official status of the victim at the time of the offense. The discussion of the addition of the same language to section 351 applies equally here. See discussion supra.

Finally, section 3 of the bill adds a new subsection (k) to section 1751, providing for extraterritorial jurisdiction over a section 1751 offense. Again, the discussion of the addition of the same language to section 351 applies equally here. See discussion supra.

Section 4 of the bill makes certain technical and conforming changes.

Oversight Findings

The Committee makes no oversight findings with respect to this legislation.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 5228 creates no new budget authority or increased tax expenditures for the Federal Government.

Inflationary Impact Statement

Pursuant to clause 3(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

Federal Advisory Committee Act of 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

Cost Estimate

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee estimates that no significant additional cost to the government will be incurred as a result of enactment of this bill.

Congressional Budget Office Cost Estimate

The Committee has received no estimate of cost from the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

Chap.		Sec.
1.	General provisions	1
•	•	•
18.	Congressional, *Cabinet, and Supreme Court* assassination, kidnaping, and assault	351
•	•	•
84.	Presidential *and Presidential staff* assassination, kidnaping, and assault	1751
•	•	•

CHAPTER 18—CONGRESSIONAL, *CABINET, AND SUPREME COURT* ASSASSINATION, KIDNAPING, AND ASSAULT

Sec.
351. Congressional, *Cabinet, and Supreme Court* assassination, kidnaping, assault, penalties.

§ 351. Congressional, *Cabinet, and Supreme Court* assassination, kidnaping, and assault; penalties

[(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect shall be punished as provided by sections 1111 and 1112 of this title.]

(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

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(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) whoever assaults any person designated in subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than $10,000, or imprisoned for not more than ten years, or both.

(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(h) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

(i) There is extraterritorial jurisdiction over the conduct prohibited by this section.

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CHAPTER 84—PRESIDENTIAL *AND PRESIDENTIAL STAFF* ASSASSINATION, KIDNAPING, AND ASSAULT

Sec.

1751. Presidential *and Presidential staff* assassination, kidnaping, and assault; penalties.

§ 1751. Presidential *and Presidential staff* assassination, kidnaping, and assault; penalties

[(a) Whoever kills any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice-President-elect, or any individual who is acting as President under the Constitution and laws of the United States, shall be punished as provided by sections 1111 and 1112 of this title.]

(a) Whoever kills (1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or

appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

[(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.]

(e) Whoever assaults any person designated in subsection (a)(1) shall be fined not more than $10,000, or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined not more than $5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

(f) The terms "President-elect" and "Vice-President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(g) The Attorney General of the United States, in his discretion is authorized to pay an amount not to exceed $100,000 for information and services concerning a violation of [this section] *subsection (a)(1)*. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

(h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(j) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

(k) There is extraterritorial jurisdiction over the conduct prohibited by this section.

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CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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§ 2516. Authorization for interception of wire or oral communications

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), or chapter 102 (relating to riots);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1084 (transmission of wagering information), section 1503 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential [assassinations] *and Presidential staff assassination*, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), sections 2314 and 2315 (interstate transportation of stolen property), section 1963 (violations with respect to racketeer influenced and corrupt organizations) or section 351 (violations with respect to congressional [assassination], *Cabinet, or Supreme Court assassinations*, kidnaping, and assault);

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